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SUMMARY RECORD OF THE 9th PLENARY MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Friday, 17 July 1998, at 10.30 p.m.

President: Mr. CONSO (Italy)

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The meeting was called to order at 10.35 p.m.

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REPORT OF THE CREDENTIALS COMMITTEE (A/CONF.183/L.7 and Corr.1 and 2)

1. **Ms. BENJAMIN** (Dominica), speaking as Chairman of the Credentials Committee, introduced the report contained in document A/CONF.183/L.7 and Corr.1 and 2, which should not require any further explanation since it was based on United Nations practice. The Committee recommended that the Conference adopt the report, including the draft resolution contained in paragraph 15.

2. **The PRESIDENT** asked the Conference if it wished to adopt the report of the Credentials Committee.

3. *It was so decided.*

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/8; A/CONF.183/C.1/L.92 and Corr.1)

4. **Mr. KIRSCH** (Canada), speaking as Chairman of the Committee of the Whole, introduced document A/CONF.183/C.1/L.92 and Corr.1 and said that the Committee had completed the mandate entrusted to it by the Conference and had adopted the draft Statute of an international criminal court. The Report of the Committee of the Whole was composed of three chapters. Chapter 1 described the proceedings of the Committee of the Whole relating to the various parts and articles referred to it by the Plenary, Chapter 2 contained the complete text of the draft Statute for the Court and the Final Act of the Conference, and Chapter 3 contained a list of the written proposals and working papers submitted to the Committee of the Whole and its Working Groups.

5. He commended to the Plenary, for consideration and adoption, the draft Statute for the Court and the Final Act of the Conference contained in the Report of the Committee of the Whole.

6. **The PRESIDENT** asked the Conference if it wished to take note of the Report of the Committee of the Whole contained in document A/CONF.183/C.1/L.92 and Corr.1.

7. *It was so decided.*

ADOPTION OF A CONVENTION AND OTHER INSTRUMENTS DEEMED APPROPRIATE AND OF THE FINAL ACT OF THE CONFERENCE (A/CONF.183/8)

8. **Mr. SCHEFFER** (United States of America) asked for a vote on the adoption of the Statute as a whole, in accordance with rule 36 of the rules of procedure. He was not asking for a recorded vote.

9. **The PRESIDENT** invited the Conference to vote on the adoption of the Statute for the Court.

10. *The Statute was adopted by 120 votes to 7, with 21 abstentions.*

11. **Mr. LAHIRI** (India) said that he had always had in mind a court that would deal with truly exceptional situations, where the State machinery had collapsed. However, the scope of the Statute had been so broadened that it could be misused for political purposes or to address situations for which the ICC was not intended.

12. His fundamental objections to the Statute were that it gave the Security Council a role in terms that violated international law. It had been argued that a role for the Council must be built into the Statute because it had set up ad hoc tribunals, but the Charter did not give the Council the power to set up courts. What the Council had received through the Statute was the power to refer, the power to block proceedings and the power to bind non-States parties. All three were undesirable.

13. The power to refer was unnecessary. The Council had set up ad hoc tribunals because no appropriate judicial mechanism had existed to try such crimes at the time, but, with the establishment of the ICC, States parties would have the right to refer cases to it. The Council did not need to refer cases, unless its referrals would be more binding on the Court than other referrals, which would clearly be an attempt to influence justice. Furthermore, members of the Council that did not plan to accede to the ICC would have the privilege of referring cases to it. That, too, was unacceptable.

14. The power to block proceedings was even harder to accept. On the one hand, it was argued that the ICC was to try crimes of the gravest magnitude, yet, on the other, it was argued that the maintenance of international peace and security might require that those who had committed such crimes should be permitted to escape justice, if the Council so decreed.

15. Under the Law of Treaties, no State could be forced to accede to a treaty or to be bound by the provisions of a treaty it had not accepted. The Statute violated that fundamental principle. The Council would almost certainly have among its members some non-parties and such States, working through the Council, would be given the power to bind other non-parties. Moreover, the inclusion in the Statute of the concept of universal or inherent jurisdiction made a mockery of the distinction between States parties and non-parties, thus straying sharply from established international law.

16. The Statute had not explicitly banned the use of nuclear weapons as a crime. As a nuclear weapon State, India had tabled a draft amendment to list nuclear weapons among those whose use was banned for the purposes of the ICC Statute. To his very great regret, that had not even been considered, and the Statute did not list any weapons of mass destruction among those whose use was banned as a war crime.

17. For those fundamental reasons of principle, with very great regret, the Government of India would not be able to sign the ICC Statute.

18. **Mr. PAOLILLO NUÑEZ** (Uruguay) said that he had voted in favour of the Statute, not to give unconditional support to a text which, like all compromise texts, was not completely satisfactory, but rather as a renewed manifestation of his country's will to contribute to the development and strengthening of international law, through the establishment of judicial institutions.

19. Various issues in the Statute, particularly regarding admissibility, had not been resolved in a completely satisfactory manner. In addition, the powers given to the Prosecutor had not been made subject to adequate controls, which might have the opposite effect to that desired. In other areas the Conference had not had sufficient time to elaborate more satisfactory solutions, but he had voted in favour of the Statute because it marked a historic step closer to the ideal of a more just and free international society.

20. **Mr. PEEROO** (Mauritius) said that the achievements of the Conference should not be underestimated. Laying the foundation of international criminal law had meant, at one and the same time, inventing international criminal law, setting out international criminal procedure, creating international criminal institutions and defining

international criminal offences. He was happy to have played a part in such an ambitious enterprise and announced that Mauritius would sign the Statute.

21. **Mr. EBDALIN** (Philippines) said that the Statute contained the vital elements of an international criminal court, with jurisdiction over genocide, crimes against humanity and war crimes, gender-based and sex-related crimes and acts committed in non-international armed conflicts. The Prosecutor could initiate proceedings *proprio motu*, independently of the Security Council.

22. The restrictions on admissibility had been reduced to an acceptable minimum. The principle of complementarity was assured, giving due regard to the national jurisdiction and sovereignty of States parties. Finally, there were provisions for restitution, compensation and rehabilitation for victims.

23. On the other hand, some provisions detracted from those strengths. Some new definitions of war crimes constituted a retrograde step in the development of international law. The applicability of the aggression provisions had been postponed pending specific definition of the crime, and States parties had the option of reservations on the applicability of war crimes provisions. Finally, the Security Council could seek deferral of prosecution for a one-year period, renewable for an apparently unlimited number of times.

24. Nevertheless, he was confident that the Court could succeed with the support of the international community and had therefore decided to vote in favour of the draft Statute.

25. **Mr. FIFE** (Norway) fully supported the establishment of the Statute of the Court. It was a compromise solution, elements of which did not reflect fully his position. Nevertheless, it would achieve the shared objective of creating a truly independent and effective Court, credible in the eyes of the world and enjoying the broadest possible support. His country would undertake the necessary national preparations to adopt the Statute.

26. **Mr. ONKELINX** (Belgium) said he had voted in favour of the Statute of the Court. While he was happy at the consensus achieved, he had some concerns at the results. In particular, Belgium would watch closely the application of the provisions of article 12, paragraph 2, because they were not in keeping with its consistently held conception of the automatic competence of the Court.

27. Secondly, articles 1 and 11 *bis* constituted a disturbing juridical construct, which would be limited by time constraints. His comments in no way detracted from his country's willingness to contribute actively to setting up the Court.

28. **Mr. SCHEFFER** (United States of America) said that he did not accept the concept of universal jurisdiction as reflected in the Statute, or the application of the treaty to non-parties, their nationals or officials, or to acts committed on their territories. The only way to bring non-parties within the scope of the regime was through the mandatory powers of the Security Council under the Charter. For those reasons he had voted against the Statute.
29. The Statute envisaged including aggression as a crime, once there was an amendment "defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime", with the proviso that such amendment should be "consistent with the relevant provisions of the Charter of the United Nations". It must be taken into account that not all acts of aggression entailed individual criminal responsibility, and any definition must clearly state what acts, under what circumstances, constituted crimes. Such a definition must also clearly refer to the Security Council's exclusive role under the Charter to determine that aggression had taken place, as a pre-condition to the exercise of the judicial authority of the ICC.

30. With respect to article 16, it was unwise as a matter of policy, and questionable as a matter of law, to purport to specify that Security Council action was effective only for a limited period of time such as twelve months. The Council had the primary responsibility for the maintenance of international peace and security, and the Conference should not seek to constrain the activities of the Council under the Charter.

31. He could not support resolution E in annex I to the Final Act, because it seemed to reflect the view that crimes of terrorism and drug crimes should necessarily be included within the jurisdiction of the Court, subject only to the question of defining them. Conferring such jurisdiction on the Court might hamper essential transnational efforts at effectively fighting such crimes.

32. **Mr. VERGNE SABOIA** (Brazil) said that he had voted in favour of the Statute because he strongly supported the establishment of an international criminal court. However, he expressed concern that article 89 regarding the obligation to surrender persons to the Court might not be compatible with the provision of the Brazilian Constitution that prohibited the extradition of nationals. As regards article 77, paragraph 1 (b), the Brazilian Constitution prohibited the penalty of life imprisonment. He understood, however, that the provision contained in article 110, paragraph 3, concerning review of sentences after 25 years of imprisonment met that concern to some extent.

33. **Mr. NATHAN** (Israel) said that, although his country had long called for the establishment of an international criminal court as a vital means of ensuring that criminals who committed heinous crimes, such as the holocaust, would be brought to justice, he had reluctantly voted against the Statute. His country had actively participated in the preparation of the Statute at all stages, not imagining that it would ultimately become a potential tool in the Middle East conflict.

34. Article 1 of the Statute clearly referred to "the most serious crimes of concern to the international community as a whole". The preamble spoke of "unimaginable atrocities", and of "grave crimes which deeply shocked the conscience of the whole international community". He questioned whether it could really be held that the action referred to in article 8, paragraph 2 (b) (viii), ranked among the most heinous and serious war crimes. Had that provision not been included, he would have been able to vote in favour of adopting the Statute.

35. **Mr. DE SARAM** (Sri Lanka) said that he had abstained because, while recognizing the great importance of establishing an international criminal court, he was concerned that the Statute moved into areas of international law that were still unclear. That concern included extending the jurisdiction of the Court in relation to national jurisdictions, without national consent and, on occasion, in a manner inconsistent with the law of treaties. In particular, he regretted that the crime of terrorism had not been included within the jurisdiction of the Court.

36. **Mr. LIU Daqun** (China) said that his delegation had always held that the ICC should be judicially independent, but that, at the same time, care must be taken to ensure that investigations did not affect the legitimate interests and sovereignty of national judicial systems. The Statute did not entirely resolve his concerns in that regard.

37. Complementarity and State consent should be the legal basis of the Court's jurisdiction. However, the Statute granted universal jurisdiction to the Court over three core crimes, although article 12 had provided that, in exercising its jurisdiction, the Court should obtain the consent of the State where the crime was committed or of which the accused was a national. However, that did not mean that consent by a State was a sine qua non of the Court's jurisdiction. That imposed an obligation upon non-parties and constituted interference in the judicial independence or sovereignty of States, which he could not accept.

38. The definition of war crimes and crimes against humanity had already exceeded commonly understood and accepted customary law. He opposed the inclusion of non-international armed conflicts in the jurisdiction of the Court and the reference to crimes against humanity.

39. The Prosecutor's right to conduct investigations or to prosecute *proprio motu*, without sufficient checks and balances against frivolous prosecution, was tantamount to the right to judge and rule on State conduct. The provision that the Pre-Trial Chamber must consent to the investigation by the Prosecutor was not a sufficient restraining mechanism.

40. The formulation and adoption of the Statute had been based on democracy, equality and transparency and it should have been adopted on the basis of consensus, not of voting. The history of negotiating international treaties had proved that no convention adopted by a vote would be assured of universal participation. For those reasons, he had been obliged to vote against the Statute.

41. **Mr. GÜNEY** (Turkey) said that although Turkey had always supported the creation of an international criminal court, the final outcome was not in keeping with its expectations. Terrorism should have been included among crimes against humanity, often being the root cause of such crimes.

42. The Court's jurisdiction should be subject to the explicit consent of States or to an "opt-in/opt-out" mechanism. The executive exercise of jurisdiction and the gravity of the crimes within the Court's jurisdiction would fully justify requiring such explicit consent.

43. Subparagraphs (c) and (d) of article 8 on war crimes were not satisfactory. The Court should have competence to take cognizance of war crimes only in the context of policies, or as part of a series of analogous large-scale crimes. The future Court should have nothing to do with internal troubles, including measures designed to maintain national security or root out terrorism.

44. Conferring a *proprio motu* role on the Prosecutor risked submerging him with information concerning charges of a political, rather than a juridical nature. To make the Statute universal and effective, reservations should at least have been permitted on certain articles on which the Conference was deeply divided. For those reasons, Turkey had been unable to approve the Statute and had found itself obliged to abstain.

45. **Mr. YEE** (Singapore) said that, to be effective, a good Court must be built upon strong foundations, commanding universal respect and acceptance.

46. The final text of the Statute seemed to reflect the result of negotiations in which many small States were not involved, resulting in a series of compromises, mostly appearing at the eleventh hour, which weakened the institutional framework of the Court.

47. There were already signs that expediency rather than faithful adherence to core principles of criminal justice was governing issues such as the composition of the Court and the trial process. The provisions on the acceptance of jurisdiction and the preconditions for its exercise had appeared for the first time at the very end of the Conference, rendering full study of all the implications impossible for his delegation.

48. He was dismayed that chemical and biological weapons had been deleted from the list of prohibited weapons in the definition of war crimes. He wondered what signals would be sent out by failing to qualify the use of such weapons as war crimes.

49. He regretted the non-inclusion of the death penalty, because of the ambiguous message which its absence sent in relation to the gravity of the crimes within the Court's jurisdiction, especially in parts of the world where the deprivation of liberty was not a sufficient deterrent. The decision not to include the death penalty in the Statute did not in any way affect the sovereign right of States to determine appropriate legal measures and penalties to combat serious crimes effectively.

50. For those reasons, he had abstained in the vote.

51. **Sir Franklin BERMAN** (United Kingdom) said that the United Kingdom interpreted the reference to aggression in article 5 and, in particular, the last sentence of paragraph 2 of that article, which mentioned the Charter, as a reference to the requirement of prior determination by the Security Council that an act of aggression had occurred.

52. Resolution E on drug trafficking and terrorism, which had been included in deference to the arguments of some delegations, did not, however, prejudge in any form a decision to be taken in due course within the review procedure as to whether either terrorism or drug trafficking should be included within the jurisdiction of the Court.

53. **The PRESIDENT** read out the following declaration concerning a new article 80 *bis*, on the non-inclusion of the death sentence in the Statute:

> "The debate at this Conference on the issue of which penalties should be applied by the Court has shown that there is no international consensus on the inclusion or non-inclusion of the death penalty. However, in accordance with the principles of complementarity between the Court and national jurisdictions, national justice systems have the primary responsibility for investigating, prosecuting and punishing individuals, in accordance with their national laws, for crimes falling under the jurisdiction of the International Criminal Court. In this regard, the Court would clearly not be able to affect national policies in this field. It should be noted that not including the death penalty in the Statute would not in any way have a legal bearing on national legislations and practices with regard to the death penalty. Nor shall it be considered as influencing, in the development of customary international law or in any other way, the legality of penalties imposed by national systems for serious crimes."

54. In the final text, the relevant articles would be renumbered appropriately.

SIGNATURE OF THE FINAL ACT AND OF THE CONVENTION AND OTHER INSTRUMENTS

55. *Signature of the final document commenced with Zimbabwe, drawn by lot.*

GENERAL STATEMENTS

56. **Mr. CORELL** (Representative of the Secretary-General) said that he was honoured to convey to the Conference the Secretary-General's congratulations on its great achievement. He thanked all participants for their efforts.

57. The Statute which had just been created would fill what had long been recognized as a gap in the international legal system. The Conference had deliberated with great care and patience, and had successfully resolved questions that had posed a challenge to the United Nations for over fifty years.

58. No doubt many would have liked to see the Court vested with even more far-reaching powers. The breakthrough achieved should not be underestimated, but should be recognized as a genuine step forward in safeguarding human rights and the rule of law. It was now for States to sign and ratify, or accede to, the Statute, and he hoped that in the next few months there would be a concerted movement of support for the Court as soon as the necessary constitutional requirements were fulfilled at national level.

59. He paid tribute to the very important contribution made to the negotiating process by the intergovernmental organizations and, in particular, the non-governmental organizations.

60. **Mr. VATTANI** (Italy) said that Italy, as host to the Conference, was particularly pleased to welcome the creation of the Statute, an event of historic importance and a decisive step forward in the development of international criminal law and in the prevention and punishment of crimes which were an offence to the conscience of mankind. The text adopted would provide a satisfactory basis for the Court's operations by guaranteeing its independence, an essential requirement for any judicial body. He was glad to note that its jurisdiction would include aggression and endangerment of the lives of women and children, notably in armed conflicts. He hoped that with the cooperation of all States parties, the Court would eventually become an efficient universal instrument, thus fulfilling the hopes placed in it by the international community.

61. **Mr. HAFNER** (Austria), speaking on behalf of the European Union and of Bosnia and Herzegovina, Hungary, Iceland and Norway, said that the European Union had always been committed to the creation of a permanent judicial institution which would make the world a more just, safer and more peaceful place, and had always affirmed that the Statute of the Court must be generally acceptable if it was to become effective. A number of extremely sensitive issues related to national criminal jurisdiction, national security and sovereignty had been resolved at the Conference, and concessions had been made on all sides to enable an acceptable result to be reached. The success achieved was an event of historic importance.

62. Work had still to be done within the Preparatory Commission, and a sufficient number of ratifications had to be received before the Court could begin work. The European Union was ready to do all it could to ensure that that task was successfully accomplished.

63. **Mr. RODRIGUEZ CEDEÑO** (Venezuela) said that, although the Statute now being adopted was not perfect, it was a balanced one, which responded to the concerns of the international community as a whole.

64. His delegation wished to place on record that the Constitution of Venezuela prohibited the death penalty, and that, although it had accepted the provision on the subject contained in article 77 (Applicable penalties), it had done so out of a desire to achieve consensus and on the understanding that in considering whether to apply the death penalty, the gravity of the crime, as well as any future review of the applicability of the death penalty, must be taken into account.

65. **Mr. GONZALEZ GALVEZ** (Mexico) said that Mexico believed that the creation of a permanent, independent international criminal court was essential in order to provide a legal framework which would eliminate impunity for the authors of serious international crimes. The package just approved offered a good basis for pursuing that objective, although it was clear that much more work would have to be done before it could be considered as a consensus document. His delegation had therefore abstained in the vote just taken.

66. Though consultations should have continued until a genuine consensus text had emerged, the Statute did include an adequate amendment mechanism. He regretted the inclusion of a clause prohibiting reservations. Contrary to some arguments, the entering of reservations would enable countries to commit themselves to the objectives of the Court without violating their national legislation, and would not invalidate the content of the Statute or detract from the responsibilities and obligations assumed by States parties.

67. Specifically, his delegation declared its reservation regarding the deletion of nuclear weapons from the list of prohibited weapons and stated that it intended to raise that issue again when a review conference was convened. In addition, Mexico did not understand the need for a further revision of article 8, subparagraph (a), relating to breaches of the Geneva Conventions of 1949, and rejected as inadequate the introductory paragraph of subparagraph (b): as a result, it might be obliged to avail itself of the option provided for in article 111 *bis* when the time came for signature. While his delegation fully accepted the commitments contained in subparagraphs (c) and (d), it could not agree to language that had been drafted in undue haste. Further specific reservations by his delegation pertained to the definition of crimes within the jurisdiction of the Court, which needed to be further developed, and to the powers given to the Court to override national law and authorize the kidnapping of Mexican citizens in order to bring them to trial in foreign countries.

68. In short, the package approved was a compromise one. He believed that the complexity of the subject required the greatest possible transparency in negotiations, and the debate in the plenary had shown that many concerns and differences of opinion remained. He wished to state that, if Mexico had taken part in the vote, it would have had to express reservations with regard to the role of the Security Council and the introductory wording of article 8 (b) on war crimes.

69. **Mr. SCHEFFER** (United States of America) said that all Governments represented at the Conference should act in partnership in the pursuit of international justice. Although his delegation was deeply disappointed that some of its fundamental concerns had not been addressed in the Statute, the United States would continue to play a leading role in fulfilling the common duty to bring to justice those guilty of the most heinous crimes. He commended the efforts of all those involved in the Conference, and hoped they would continue to work together in the future to meet the challenge of establishing international justice.

70. **Mr. PERAZA CHAPEAU** (Cuba) said that his delegation would have liked the Statute to have provided more vigorous measures to punish the perpetrators of genocide and other war crimes. Although it could concur in the adoption of the Statute in the constructive spirit it had shown throughout, it greatly regretted that nuclear weapons and other weapons of mass destruction had not been included among those weapons whose use would constitute a war crime. The subordination of the Court to the Security Council would also reduce the Court's independence and efficiency, and would attribute to the Council powers that the Charter did not confer on it.

71. Cuba was grateful to those delegations which had supported its proposal for the inclusion of economic blockades in the list of crimes against humanity listed in article 7. Its support for the Statute did not imply that it was giving up the right to continue to denounce the genocidal war waged against the Cuban people by an economic blockade. He was convinced that, sooner rather than later, justice would prevail.

72. **Mr. MAHARAJ** (Trinidad and Tobago) said that the flexibility shown by many delegations in order to avoid impeding the process of establishing the Statute was proof of the political will to create an international criminal court. His own country had shown flexibility by accepting the deferral of a decision on including in the jurisdiction of the Court offences related to drug trafficking of a transnational nature.

73. He greatly regretted that Trinidad and Tobago had found itself unable to sign the Statute, largely owing to the lack of consensus regarding the imposition of the death penalty on persons convicted of the most serious crimes. It considered that international law did not prohibit the death penalty, but on the contrary recognized the sovereign right of countries to determine whether or not to impose it. While his delegation was willing to sign the Final Act of the Conference, and would continue to work towards the establishment of an international criminal court, it believed that such a court could be effective only if it had wide support and membership. That wide support could not be achieved unless the Statute recognized the principles of international law and the legitimate concerns of States.

74. **Mr. ALHADI** (Sudan), speaking on behalf of the Arab Group, said that the Conference had created a historic document, the signing of which would be a moment of dignity for all humanity. He thanked the Italian Government and all those who had contributed to the establishment of the Court.

75. While the Arab States would not stand in the way of the adoption of the Statute, he felt bound to place on record that they were not convinced by what had been agreed upon. It was regrettable that the Statute included general expressions concerning the crime of aggression, and that it would be many years before the Court could exercise its jurisdiction in that field. The Arab States were afraid that the inclusion of non-international conflicts within the Statute would allow interference in the internal affairs of States on flimsy pretexts.

76. He would have preferred agreement by the international community on criminalizing the use or the threat of use of weapons of mass destruction, including nuclear weapons.

77. The Statute gave the Prosecutor, acting *proprio motu*, a role beyond the control of the Pre-Trial Chamber. The Prosecutor should be under reasonable and logical control, and should not act ex officio.

78. The Arab Group had expressed their fear that the Security Council might be granted powers that could affect the role of the ICC concerning any war criminal, regardless of country, religion, or nationality. The text adopted might increase the powers of the Council over and above those set out in Chapter VII of the Charter. Where the Council failed to shoulder its responsibilities, the General Assembly should have a role in punishing war criminals. The right to express reservations should also have been granted. The removal of that right by article 120 would be an obstacle to accession.

79. **Mr. DABOR** (Sierra Leone) said that he was happy to note that the Statute preserved jurisdiction over internal armed conflict and provided that the Prosecutor should have *proprio motu* powers. The Conference had achieved a delicate balance that would give the world community a fair and effective permanent court.

80. The success of the Statute would depend on cooperation between States, and he urged all States to maintain the momentum and ensure that the treaty came into force soon.

81. **Mr. OWADA** (Japan) said that, after adoption of the Statute, the goal must be to create and foster a court that could function effectively, on the basis of the total confidence of the international community. The task of the Conference had been to reconcile the need to create an objective regime of international justice and the need to construct a flexible system that would enable States to cooperate on a voluntary contractual basis.

82. Accordingly, Japan had sought to introduce under the Statute a transitional regime for the Court's jurisdiction to apply during the initial period, so that the confidence of States in the impartial and proper functioning of the

Court might be built up through experience. That idea, he was happy to see, had been incorporated in article 111 *bis* of the Statute. His delegation had also contributed to the success of the Conference in the area of financing the Court.

83. The true test of success would ultimately depend upon the cooperation of the international community in making the Court work effectively in practice. The firm political commitment demonstrated throughout the Conference must be further strengthened to secure the future of the Court.

84. **Mr. EL MASRY** (Egypt) said that his country had been among the first to call for the establishment of the ICC, because recent history was full of crimes whose perpetrators had gone unpunished. While he supported the text in general, there were some matters that the Statute did not deal with satisfactorily.

85. Nuclear weapons should have been included. He agreed with the statements made by the representative of the Sudan on behalf of the Arab Group, and of Lesotho, on behalf of the African Group. The adoption of article 8, paragraph 2 (b) (xx), meant that any future lists of prohibited arms annexed to the text should include weapons of mass destruction, particularly nuclear weapons.

86. He hoped that a definition of aggression, the basis of all crimes, would be found and emphasized that the General Assembly as well as the Security Council should be empowered to determine the existence of aggression.

87. He again stressed the need that the Statute should contain objective criteria of complementarity. The Prosecutor should not be able to initiate investigations ex officio, for practical and legal reasons. With regard to reservations, he hoped that States would be able to agree on a formula which did not affect the main purpose of the Convention.

88. He hoped that the approval of the Statute would mark a new beginning of a human society in which peace reigned, based on justice for all.

89. **Mr. SKELEMANI** (Botswana) said that, although imperfect, the Statute clearly expressed common values of justice, governing how the human race wanted to live in the future. He had supported the adoption of the Statute because it reflected the consensus of humanity as represented at the Conference.

90. Generations to come should be able to perfect the Statute, and he urged those who felt that the document fell short of their expectations to reflect further and resolve to improve it during the review process.

91. **Mr. BOUGUETAIA** (Algeria) fully subscribed to the statement made by Sudan on behalf of the Arab Group. Algeria had always been committed to the establishment of the Court. The text of the Statute met some, if not all, of his major concerns. He still had some regrets and some fears, but hoped that, with time, those fears would be overcome.

92. **Mr. SALAND** (Sweden) speaking on behalf of the Western European and Others Group, said that the historic adoption of the Statute of the Court marked the realization of an aspiration harboured by humankind for more than fifty years and held out promise of a better, safer and more just world.

93. **Mr. AYUB** (Pakistan) said that the establishment of the Court would, he hoped, act as an effective deterrent to the commission of heinous crimes. It was the duty of every State to see that the perpetrators of heinous crimes committed within its jurisdiction should not go unpunished. However, where there was a total breakdown of State

authority, the ICC should have jurisdiction to bring the offenders to justice. The ICC should, however, complement and not supplant national legal systems or impinge on the sovereignty of the State. However, certain provisions in the Statute were of serious concern to his delegation, as they tended to undermine the basic principle of complementarity.

94. It would also be a negation of the principle of sovereignty if a State's legal system were challenged on the ground that a trial conducted by it was a sham trial intended to protect or shield criminals. Article 89, dealing with provisional arrest, conflicted with the law of his country.

95. Only a State party, and not the Prosecutor *proprio motu*, should be competent to activate the trigger mechanism, as it alone could determine its competence to deal effectively with cases involving the crimes mentioned in article 5. He was not in favour of any role for the Security Council in relation to the Court, as the Council's influence on the ICC would not be conducive to the development of a non-discriminatory and non-selective uniform legal system.

96. It was also essential that reservations should be permitted, for, otherwise, States would be reluctant to become parties to the Statute. He had concerns, too, about the provision on armed conflict not of an international character, as contained in article 8 (c) and (d). Such conflicts fell entirely within domestic jurisdiction.

97. While he had serious concerns with the provisions outlined, he did not wish to stand in the way of the consensus that had emerged.

98. **Mr. WESTDICKENBERG** (Germany) said that a strong, effective and independent international criminal court would certainly be established. The world would hear the signal that heinous crimes like genocide, crimes against humanity, war crimes and the crime of aggression would no longer go unpunished.

99. **Mr. PERRIN DE BRICHAMBAUT** (France) endorsed the statement made on behalf of the European Union by the representative of Austria. He would sign the Statute establishing the Court because it marked a first, decisive step in establishing a regime of international justice to punish the most serious crimes. France intended to play its full role under all of the provisions of the Statute including, if the time came, those provided for under article 111 *bis*.

100. **Mr. ZAMIR** (Bangladesh) said that he was deeply gratified that the principle of automatic jurisdiction in respect of the core crimes had been vindicated. He welcomed the recognition of sexual violence as amongst the most heinous and repulsive crimes. He was pleased that the basis of harmonious relationship between the ICC and the United Nations organs had been established. However, he regretted that the Conference had not dealt with the question of nuclear weapons and weapons of mass destruction in a way that would respond to the overwhelming concerns of the majority of mankind.

101. He was confident that the ICC would help to rally universal support from the international community and help in the move towards an era of peace and justice.

102. **Mr. GEVORGIAN** (Russian Federation) said that, after more than three years of intense work and effort, an effective, international criminal court had been established that could act fully in accordance with recognized norms and standards of international law and human rights.

103. While noting with satisfaction that a compromise package had been found which he could support, he regretted that it had not been adopted by consensus. Some issues relating to jurisdiction and the Prosecutor, which

he and others had favoured, had not been included. He had serious doubts about the twelve-month period with respect to consideration by the Security Council. Determination of the existence of aggression must be a matter only for the Council. On the whole, however, he felt that the new Court would successfully take its place in the system for the maintenance of international peace and security.

104. **Mr. BAZEL** (Afghanistan) said that his country would have suffered fewer atrocities and horrors if such an accord had existed 20 years earlier. Potential aggressors should be aware that they would no longer have impunity. The overwhelming majority of States had spoken in favour of the criminalization of aggression.

105. The Statute offered one way of achieving justice and rule of law, but he emphasized that a national decision on reconciliation could serve to resolve a conflict and bring normality to a complex situation.

106. **Mr. IDJI** (Benin) said that the adoption of the Statute was a major step forward for humanity as a whole and for Africa in particular. Africa had suffered from the most serious violence for decades.

107. He was not entirely satisfied with the text with respect to war crimes, because such crimes were also committed where a State was no longer in place. Where war lords ruled, should those war lords remain unpunished?

108. While not denying the importance of the Security Council's role, he asked whether it was really right and fair that the Council should be able to block international criminal cases.

109. Nuclear weapons should have been outlawed once and for all. He had not gained satisfaction on those points, but nevertheless welcomed the considerable progress achieved. He hoped that all States would work together for the speedy establishment of a strong and credible court.

110. **Archbishop MARTINO** (Holy See) welcomed the broad agreement on the establishment of an international criminal court to judge the most serious crimes. It was an important step in the long march towards greater justice. He was pleased to note the consensus in introducing the notion of serious crimes into the preamble of the Statute.

111. Consolidation of the rule of law in the international community required a culture of human rights which nurtured the equal dignity of human persons. The establishment of a court to deal with genocide, crimes against humanity, war crimes and aggression must be parallelled by a firm and personal moral commitment to the good of the human family as a whole. The Holy See viewed human dignity as shared by every person, regardless of sex, race, age, ethnic origin or stage in life, from the unborn to the elderly. The Holy See reiterated its condemnation of all violations of international humanitarian law, particularly those aimed at the most vulnerable sections of the civilian population.

112. **Mr. MINOVES TRIQUELL** (Andorra) said that the Statute would strengthen the common bonds of humanity. Throughout the centuries, his country had received thousands of refugees from European wars and was aware of the disasters that such wars left in their wake. Hence it had participated vigorously in the Conference. He was greatly satisfied with the result and hoped that it would serve all future generations.

113. **Mr. SANDOZ** (Observer for the International Committee of the Red Cross) said that he attached great importance to the establishment of an effective international criminal court. The Statute should make possible effective action by the Court against major criminals still at large. Nevertheless, the Statute still required to be completed, and the possibility of revising it in seven years' time was welcome. He stressed the importance of

rapidly drawing up the annex on the use of indiscriminate weapons, especially those of mass destruction. During the first review conference, it should also be possible to introduce punishment for the use of anti-personnel landmines and nuclear weapons.

114. He welcomed the inclusion of non-international conflicts, but regretted the absence of references to the use of famine, indiscriminate attacks and prohibited weapons.

115. The effectiveness of the Court might be impaired, as no war criminal on the territory, or of the nationality, of States that were not party to the Statute could be prosecuted without their agreement. Even for a State party, article 111 *bis* provided an opportunity, albeit a temporary one, to rule out the competence or jurisdiction of the Court for war criminals.

116. If the Court was to be effective, many States must sign and ratify the treaty. The Court must be given adequate financing, judges, a Prosecutor and personnel of the highest integrity. The key to its success lay in proving its competence and thus gaining the confidence of all. At the same time, efforts must be intensified to implement the universal obligation to prosecute and try war criminals, and to develop national legislation in that area. The International Committee of the Red Cross would continue to provide support through consultative services.

117. **Mr. PACE** (Observer for the World Federalist Movement on behalf of the Coalition for an International Criminal Court), speaking on behalf of the 800 member organizations of the Coalition, said that the establishment of an international criminal court would represent a monumental advance, acting as a deterrent and strengthening national legal systems for prosecuting crimes against humanity. It would save millions of humans from suffering unspeakably horrible and inhumane death in the coming decades.

118. **Mr. SANE** (Observer for Amnesty International) said that the common goal of creating an effective, independent, and just international court was much closer to being achieved. There was an independent Prosecutor, empowered to initiate investigations on the basis of information provided by victims. There was a permanent mechanism with competence over the three core crimes. The Court would have the power to award compensation to victims. The Statute expressly recognized that rape and other forms of sexual abuse were war crimes and crimes against humanity. However, Amnesty International was disappointed that a few powerful countries appeared to hold justice hostage and seemed to be more concerned with shielding possible criminals from trial than with introducing a charter for the victims.

119. Amnesty members worldwide would mobilize to ensure that the Court fulfilled its true purpose. They would campaign for universal ratification, by opposing interference by the Security Council, by exposing and shaming States which were considering opting out of the Court's competence over crimes committed by their nationals or on their territory. The ultimate goal of an international community dedicated to ending impunity must be universal jurisdiction.

CLOSURE OF THE CONFERENCE

120. **The PRESIDENT** said that the Conference had marked a fundamental change in the protection of the human being and the fundamental values of humanity. Only 50 years after the adoption of the Universal Declaration of Human Rights, the international community was warning that it would no longer tolerate those who outraged the individual conscience. On the threshold of the third millennium, participants could take pride in their part in the establishment of the Court.

121. He declared the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court closed.

The meeting rose at 2.10 a.m.